IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 36 of 1998

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHWIN H. ACHARYA - Appellant(s)
Versus
NASRUDDIN VALJIBHAI & 1 - Opponent(s)

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Appearance :
MR MJ BUDDHBHATTI for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MR YOGESH S LAKHANI for Opponent(s) : 1,
MR SP HASURKAR, APP, for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 6th June 1997 passed by learned Judicial Magistrate, First Class, (Muni) Rajkot in Criminal Case No.339 of 1991 whereby the respondent was acquitted of the offences under section 7(1) and section 16(1)(A)(1) of Prevention of Food Adulteration Act, as alleged against him.

2. The prosecution case in short is to the effect that the Food Inspector had collected sample of Sweet Mamra from the shop of the respondent on 28.11.1990 after following proper procedure. The sample was sent for analysis and upon inspection was alleged that the same was found to be adulterated. Therefore a complaint came to be filed against the respondent under sections 7(1) and 16(1) of the Prevention of Food Adulteration Act.

3. The case was numbered as Criminal Case No.339 of

1991. After recording necessary evidence, the learned Magistrate acquitted the respondent of the offences with which he was charged. It is against the aforesaid judgement and order the present appeal has been filed.

4. Mr. S.P. Hasurkar appearing for the appellant submitted that the trial court has committed an error in not accepting the evidence of the complainant and in not appreciating the facts that the evidence of the complainant is fully supported by the panchnama which is the document prepared on the spot. He further submitted that peon Shri Bhupatbhai Vaghabhai fully supported the complainant on all material aspect and there was no reason to disbelieve the prosecution evidence. He, therefore, submitted that the appeal deserves to be allowed.

5. Learned Advocate appearing for the respondent submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondent and therefore this Court may not interfere with the impugned

judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived

at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. I have heard learned Advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that the sample was analyzed on 18th May 1984 but the report was prepared and signed on 25th May 1984. It was also found that the public analyst did not personally analyze the samples personally, but sent the same to other members of the laboratory. As per the ratio laid down in catena of decisions such action is illegal and such report cannot be a base for conviction. When no explanatory evidence is adduced, the report prepared seven days after the analysis will lose its evidentiary value. It was further found that the respondent had purchased the article on 18.11.1990 from Deepak Gruh Udyog. Nothing contrary was produced on record to prove the case of the prosecution. Thus, the trial court has come to the conclusion that the

prosecution has not established the case against the respondent beyond reasonable doubt.

7.1 In the present appeal learned Advocate for the appellant is not in a position to show anything evidence to take a contrary view of the matter. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of

which is under appeal, will ordinarily suffice."

8. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

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